

FILED

DEC 27 2021

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

IN RE: SUBPONEAS ISSUED TO §
LABATT FOOD SERVICE, LLC §
AND BLAIR LABATT § CIVIL ACTION NO. SA21MC1242

XR

**AMENDED MOTION TO QUASH SUBPOENA TO PRODUCE DOCUMENTS,
ELECTRONICALLY STORED INFORMATION, OR OBJECTS, AND TO PERMIT
INSPECTION, COPYING, TESTING, OR SAMPLING OF THE MATERIAL AND
OBJECTIONS**

LABATT FOOD, LLC (“MOVANTS”) file this Amended Motion to Quash Subpoena to Produce Documents, Electronically Stored Information, or Objects, and to Permit Inspection, Copying, Testing, or Sampling of the Material, and in support thereof would respectfully show unto the Court the following:

I.

INTRODUCTION

1. The underlying suit in this matter is a complaint requesting a class action lawsuit to cease the unlawful conduct of conspiracy, in violation of Section 1 of the Sherman Act, by requesting treble damages and injunctive relief. Plaintiffs, OLEAN WHOLESALE GROCERY COOPERATIVE, INC. and JOHN GROSS AND COMPANY, INC., claim that defendants, AGRI STATS, INC., BUTTERBALL LLC, CARGILL, INC., CARGILL MEAT SOLUTIONS CORPORATION, COOPER FARMS, INC., FARBEST FOODS, INC., FOSTER FARMS, LLC, FOSTER POULTRY FARMS, THE HILLSHIRE BRANDS COMPANY, HORMEL FOODS CORPORATION, HORMEL FOODS, LLC, HOUSE OF RAEFORD FARMS, INC., KRAFT HEINZ FOODS COMPANY, KRAFT FOODS GROUP BRANDS LLC, PERDUE FARMS, INC., PERDUE FOODS LLC, TYSON FOODS, INC., TYSON FRESH MEATS, INC. AND TYSON PREPARED FOODS, INC., entered into an agreement to exchange sensitive information

regarding production and sales of Turkey. The data service provider, defendant AGRE STATS, INC., prepared reports exclusively for all defendants who control 80% of the wholesale market in the United States. The petition alleges that defendants then used this information to identify areas with potential opportunities where their prices for turkey products were significantly lower than their competitors. The Supreme Court has recognized that this level of data exchange is likely to have anticompetitive effects.

2. On November 16, 2021, MOVANTS were served with a Subpoena “to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action” and were commanded to produce them to Cuneo Gilbert & LaDuca, LLP, 4725 Wisconsin Ave., NW, Suite 200, Washington, D.C. 20016. *See attached Exhibit 2, Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in Civil Action.*

3. The issued Subpoena seeks production of a broad category of records attached to the subpoena as “Attachment A”. *See Exhibit 2, “Attachment A,” to Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in Civil Action.*

4. The subpoena should be quashed because it (1) fails to allow a reasonable time to comply, (2) requires compliance beyond the geographical limits specified in Rule 45(c) of the Federal Rules of Civil Procedure, (3) requests information involving trade secrets and other confidential research, development, or commercial information, and (4) subjects Labatt to undue burden.

II

APPLICABLE LAW

5. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction... on a party who fails to comply. Fed. R. Civ. P. 45(d)(1).

6. A subpoena may command the production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person. Fed. R. Civ. P. 45(c)(2)(A).

7. On a timely motion, the court for the district where compliance is required must quash or modify a subpoena that; (i) fails to allow a reasonable time to comply, (ii) requires a person to comply beyond the geographical limits specified in rule (c), (iii) requires disclosure of privileged or other protected matter...; or (iv) subjects a person to undue burden. Fed. R. Civ. P. 45(d)(3)(A).

8. To protect a person subject to or affected by a subpoena, the court of the district where compliance is required may, on motion, quash or modify the subpoena if it requires: (i) disclosing a trade secret or other confidential research, development, or commercial information. Fed. R. Civ. Pr. 45(d)

III

ARGUMENT

9. Movants object to scope of the subpoena on the basis that the documents sought are overly broad in subject matter and temporal scope and impose an undue burden considering the undue hardships and work necessary to respond to each request and the cost for production on the manner requested.

10. On its face, the request for documents sought dates back 16 years to 2005 demanding 37 different areas of Turkey transactional data from manufacturer product codes to any data fields relating to product types and product categories. *See Exhibit 2*. The magnitude of the request would require over 31,000 personnel hours to identify and retrieve. Labatt would have to pay numerous people full time for approximately 5 weeks or more to complete such a task. *See Affidavit of Breann Field attached as Exhibit 1, and Exhibit 2, "Attachment A," to Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in Civil Action*. The request, therefore,

is an undue burden as the cost of retrieving the magnitude of information would be enormous and thereby overly onerous.

11. Movants object to the subpoena on the basis that the information sought is NOT requested to be produced at a place within 100 miles of where movants regularly transact business as required by Fed. R. Civ. P. 45(c)(2)(A). Labatt is a San Antonio, Texas based entity and this request demands production in Washington D.C. *See Exhibit 1 and Exhibit 2, Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in Civil Action.*

12. Even if the scope of the subpoena was manageable, and the responsive documents were not privileged, the timing of the subpoena and the short time frame for response make compliance impossible. The requested information is commanded, by the attached subpoena, to be produced by December 3, 2021 at 12:00 pm. *See Exhibit 2.* As indicated by the attached declaration this is not nearly enough time for compliance.

13. Movants object to the subpoena on the basis that the requested information involves trade secrets and other confidential research, development, or commercial information that could potentially be produced to Labatt's direct competitors. *See Exhibit 1.* This information should be protected and not unnecessarily produced to the detriment of movants. Once produced this information would be available to the public domain and thereby movants direct competitors as well as Commercial and Institutional Indirect Purchaser Plaintiffs who are also competitors of movants.

14. Therefore, since the subpoena (1) fails to allow a reasonable time to comply, (2) requires a compliance beyond the geographical limits specified, (3) requests information involving trade secrets and other confidential research, development, or commercial information, and (4) subjects Labatt to undue burden. For these reasons, Labatt requests the court to protect its interest and quash the subpoena.

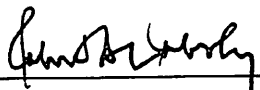
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PRAYER

15. WHEREFORE, PREMISES CONSIDERED, MOVANTS pray the Court Quash the Subpoena issued to Labatt Food Service, LLC, and for all other just relief.

Respectfully submitted,

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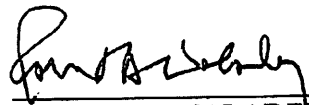
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ROBERT A. VALADEZ

DECLARATION OF BREANN FIELD

STATE OF TEXAS

§

§

CITY OF SAN ANTONIO

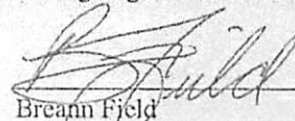
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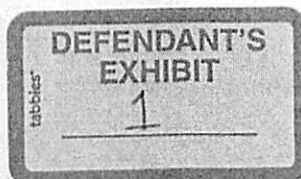
Ms. Breann Field declares as follows:

1. I am Vice President of Purchasing and Marketing for Labatt Food ("Labatt"). As Vice President of Purchasing and Marketing, I supervise all aspects of vendor relations and inventory management, including the work of 22 buyers who purchase for five warehouses.
2. Labatt is a San Antonio, Texas based regional distributor of food and food related products. We sell primarily to chain and independent restaurants throughout Texas, Oklahoma, and New Mexico, and a small portion of Colorado.
3. Labatt has multiple distribution centers spanning the state of Texas and deals with over 60 different manufacturers of turkey items and approximately well over 200,000 different unique turkey inventory items. I estimate that to effectively retrieve the requested information, dating back 16 years, would take approximately 1,200 personnel hours. This project would require potentially 6 personnel 5 or more weeks, full time, to accomplish; all while their current daily tasks are ceased.
4. The information requested involves trade secrets and other confidential research, development, or commercial information and could potentially be produced to Labatt's direct competitors because the requests ask for sales information including who Labatt's vendors and customers are. This information, if produced, could be used by competitors to gain access to Labatt's vendors and/or customers.

I hereby request that my identity, my company's identity, and the contents of this document be kept confidential and be exempt from public disclosure as provided by applicable law.

Pursuant to 28 U.S.C. 1746, I declare, under penalty of perjury, that the foregoing is true and correct.


Breann Field
12/14/2021
Date



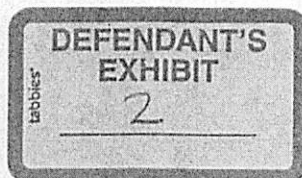
ATTACHMENT A

1. All documents and data reflecting your analysis of competition in the procurement and sale of Turkey, including but not limited to:

- a) Assessments and analyses of available Turkey suppliers, whether you purchased from those suppliers or not;
- b) Assessments and analyses of Turkey resellers with which you compete, including but not limited to other wholesale distributors and mass merchandisers; and
- c) Assessments and analyses of your (actual or prospective) customers, including, if available, analyses by customer type, location within the United States, or any other dimension along which you segment customers.

2. For the period from January 1, 2005, to the present, please provide transactional data sufficient to show the following information related to your purchases of Turkey:

- a) purchase order number;
- b) date of purchase;
- c) internal product identification number;
- d) manufacturer product code (e.g., UPC, SKU, or other identifying code associated with the item);
- e) manufacturer name;
- f) manufacturer identification number;
- g) brand name (including private label brands);
- h) brand identification number (including private label brands);
- i) indicator of private label brands;



- j) product description;
- k) all fields depicting the grade, cut, product form, and/or type of Turkey;
- l) quantity purchased;
- m) any data field related to product types or product categories;
- n) quantity measure (e.g., live weight, carcass weight, retail weight, etc.);
- o) product weight in pounds;
- p) unit of measurement for quantity purchased;
- q) unit converter (if applicable);
- r) transaction type (e.g., purchase, return, exchange);
- s) contract number under which the purchase was made (if applicable);
- t) any field(s) depicting contract type or pricing mechanism (if applicable);
- u) all pricing and fee information related to the purchase, including unit price, freight, tax, and similar charges (USD);
- v) unit of measure for any price fields (e.g., dollar per carcass weight pound);
- w) any purchase order-level chargebacks, discounts, rebates, credits, freight allowances, free goods and/or services;
- x) gross purchase amount (USD);
- y) net purchase amount (USD);
- z) any data fields related to supplier type (e.g., processor, distributor, etc.);
- aa) supplier identification/vendor number;
- bb) supplier name and address;
- cc) ship-to entity identification number;

- dd) ship-to entity name;
- ee) ship-to entity address;
- ff) bill-to entity identification number;
- gg) bill-to entity name;
- hh) bill-to entity address;
- ii) bill-to entity phone number; and
- jj) bill-to entity email address.

3. For the period from January 1, 2005, to the present, please provide documents and data sufficient to show the following information related to your purchases of Turkey:

- a) Contracting methods, practices, policies, or strategies relating to Turkey, including but not limited to:
 - i. all RFPs or bid documents issued by any Turkey supplier;
 - ii. quotes, bids, bid announcements, or proposals issued by you to or relating to any Turkey supplier;
 - iii. communications relating to negotiations with suppliers related to price and non-price terms of contracts;
 - iv. all agreed upon price and non-price terms including delivery schedules, quotas, or required purchases; and
 - v. contracts consummated with suppliers including all amendments, appendices, or addendums to those contracts.
- b) Data relating to any off-invoice financial transactions between you and Turkey suppliers (for each item, indicate the date of the transaction, type of transaction, supplier, and USD amount); including but not limited to:

- i. chargebacks, discounts, rebates, credits, freight allowances, free goods and/or services, cooperative marketing funds, advertising funds, promotional funds or allowances, slotting allowances; and
- ii. any other marketing assistance, support, or other off-invoice financial incentives received.

4. For the period from January 1, 2005, to the present, please provide transactional data sufficient to show the following information related to your sales of Turkey and prepared foods that include Turkey:

- a) invoice number;
- b) date of sale;
- c) internal product identification number;
- d) manufacturer product code (e.g., UPC, SKU, or other identifying code associated with the item);
- e) manufacturer identification number;
- f) manufacturer that supplied you the items sold, and the brand (including private label brands) under which the item was labeled by the manufacturer;
- g) indicator of private label brands;
- h) the grade, cut, product form, and/or type of Turkey;
- i) product description;
- j) any data field related to product types or product categories;
- k) product weight in pounds;
- l) quantity sold;
- m) unit of measurement for quantity sold;

- n) quantity measure (e.g., live weight, carcass weight, retail weight, etc.);
- o) unit converter (if applicable);
- p) transaction type (e.g., sale, return, exchange);
- q) all pricing and fee information related to the sale, including unit price, freight, tax, or similar charges (USD);
- r) unit of measure for any price fields (e.g., dollar per carcass weight pound);
- s) any invoice-level chargebacks, discounts, rebates, credits, freight allowances, free goods and/or services;
- t) cost of goods sold ("COGS") (USD), including a definition/description of how you calculated COGS;
- u) cost of the meat in the Turkey product;
- v) cost of the entire Turkey product;
- w) any data fields for any other fixed or variable costs or costs associated with the Turkey sold (processing, labor, plant costs, other ingredients, etc.);
- x) gross sale amount (USD);
- y) net sale amount (USD);
- z) customer group or channel identification number;
- aa) customer group or channel name and description (e.g., university, prison, caterer);
- bb) distributor name and description;
- cc) customer identification number;
- dd) customer name;
- ee) customer address;

- ff) contract number under which the purchase was made (if applicable);
- gg) indicator of whether the sale price was negotiated by you, or if the customer negotiated it directly with the supplier;
- hh) any field(s) depicting contract type or pricing mechanism (if applicable);
- ii) margin added to sales in cost-plus model (if applicable);
- jj) ship-to entity identification number;
- kk) ship-to entity name;
- ll) ship-to entity address;
- mm) bill-to entity identification number;
- nn) bill-to entity name;
- oo) bill-to entity address;
- pp) bill-to entity phone number; and
- qq) bill-to entity email.

5. For the period from January 1, 2005, to the present, please provide documents and data sufficient to show the following information related to your sales of Turkey and prepared foods that include Turkey:

- a) Contracting methods, practices, policies, or strategies relating to Turkey, including but not limited to:
 - i. all RFPs or bid documents issued by any customers;
 - ii. quotes, bids, bid announcements, or proposals issued by you to or relating to any customer;
 - iii. communications relating to negotiations with customers related to price and non-price terms of contracts; and

iv. contracts consummated with customers.

- b) Data relating to any off-invoice financial transactions between you and your customers (for each item, indicate the date of the transaction, type of transaction, supplier, and USD amount), including but not limited to:
- i. chargebacks, discounts, rebates, credits, freight allowances, free goods and/or services, cooperative marketing funds, advertising funds, promotional funds or allowances, slotting allowances; and
 - ii. any other marketing assistance, support, or other off-invoice financial incentives paid.

6. All documents and data reflecting your analysis of competition in the sale of prepared foods that include Turkey, including but not limited to:

- a) Assessments and analyses of prepared foods sellers with which you compete, including but not limited to other wholesale distributors and mass merchandisers; and
- b) Assessments and analyses of your (actual or prospective) customers, including if available, analyses by customer type, location within the United States, or any other dimension along which you segment customers.